IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.530 OF 1995

1. Shri.Lallansingh Menbahadur Singh, Age 49 yrs.
2. Sau.Durgadevi Lallansingh Age 43 yrs.
3. Sanjaykumar Lallansingh Age 27 yrs.
4. Rakeshkumar Lallansingh
All r/o Vasundhara Society Brahmagiri, Jain Road, Nashik Road, Tal and Dist. Nashik. ..Appellants (Ori.Accused Nos.1 to 4)

Versus

State of Maharashtra for Mahendrakumar Shobhanan Singh Age 52 yrs. Occ:Service, R/o 268/24, New Locality, Allahabad-211006. ..Respondents (Ori.Complainant)

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Shri.B.G.Vaidya Advocate for appellants
Shri.A.S.Shitole, A.P.P. for the State.

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 30/DEC.1,2004

ORAL JUDGMENT:

1. Through this appeal, the appellants i.e. original accused nos.1 to 4 challenge the judgment and order dated 17th October, 1995, passed by the

learned Additional Sessions Judge, Nasik in Sessions Case No.40 of 1995. By the said judgment and order, the learned Judge convicted all the appellants for the offence under Section 498-A read with Section 34 of IPC and sentenced each of them to S.I. for one year and to pay a fine of Rs.1000/- i/d S.I. for six months.

2. The learned advocate for the appellants has submitted that the appellant no.2 Smt.Durgadevi Lallansingh expired on 5th August, 2002. He has produced xerox copy of the death certificate regarding death of Smt.Durgadevi. The said xerox copy of the death certificate is taken on record. In view of the death of appellant no.2, the appeal abates as far as Smt.Durgadevi Lallansingh is concerned. This appeal is being heard in respect of the other three appellants i.e. appellant nos.1,3 and 4 i.e. original accused nos.1, 3 and 4.

3. Briefly stated the prosecution case is as under:

. That the deceased Mamta alias Gudia was the daughter of the complainant P.W.4 Mahendrakumar Singh. The complainant was a resident of Allahabad. The marriage of Mamta with accused no.3 Sanjaykumar took place in May, 1993. It is the prosecution case

that after the marriage, when Mamta was leaving for her matrimonial house, accused no.1 Lallansingh made a demand for money for furniture. However, complainant informed him that he was unable to pay the amount at the said time and that he would pay the amount later. Thereafter Mamta went to reside at her matrimonial house at Nasik. The payment of demand of Rs.20,000/- for furniture was not met by the parents of Mamta, hence Mamta was harassed and illtreated in her matrimonial home. Whenever Mamta met her family members, she informed them about the illtreatment and harassment. Due to the harassment and illtreatment, she committed suicide on 15th July, 1994 by hanging herself. On 15th July, 1994, the complainant received a message regarding the death of his daughter Mamta. On receiving the message, he along with his son and other relatives from Allahabad came to Nasik. It is the prosecution case that due to threats issued by the accused persons, the complainant did not lodge his complaint and he went back to Allahabad after the cremation. At Allahabad he wrote a letter to the Superintendent of Police at Allahabad in which he made complaint against all the four accused persons. The said complaint came to be forwarded to Nasik Road Police Station. During the course of investigation, the complainant also produced some letters written by

the deceased Mamta alias Gudia to him and other members of the family. The said letters are at Exhibits-24 to 29. After completion of investigation, the charge sheet came to be filed.

3. In due course, the case was committed to the Court of Sessions. The charge came to be framed against all the accused persons for the offence under Section 498-A read with Section 34 and under Section 306 read with Section 34 of IPC. All the accused pleaded not guilty to the said charge and claimed to be tried. After going through the evidence adduced by the prosecution, the learned Judge acquitted all the four accused persons of the offence under Section 306 read with Section 34 of IPC. However, the learned Judge convicted and sentenced the appellants as stated in para no.1 above. Hence, this appeal.

4. I have heard Shri.B.G.Vaidya, the learned advocate for the appellants and Shri.A.S.Shitole, the learned A.P.P. for the State. I have also perused the entire record pertaining to this case. I have reached the conclusion that the appeal deserves to be allowed.

5. The most important witnesses in the present case

are P.W.4 Mahendrakumar i.e. father of Mamta alias Gudia, P.W.5 Shilendra Singh and P.W.8 Shailesh Singh who are the brothers of Mamta.

6. Complainant P.W.4 Mahendrakumar has stated that his daughter Mamta was married to accused Sanjaykumar. After the marriage when his daughter was leaving his house, accused no.1 Lallansingh said to the complainant that complainant should give sum of money for the furniture. The complainant Mahendrakumar assured Lallansingh that he shall pay cash amount for the furniture. Accused no.1 Lallansingh insisted that complainant should make immediate payment. However, the complainant pacified him and stated that he would pay the money lateron. The complainant Mahendrakumar has stated on the telephone his daughter Mamta used to tell him that her in-laws were demanding money for the purpose of furniture and that he should make arrangement for the payment of the same. His daughter Mamta had written various letters to him and to other members of family. On 14.5.1994 his daughter had come to Allahabad for the marriage of his son and at that time, she had told him that on account of non-payment of amount for furniture she was being taunted by her in laws. Thereafter on 15th July, 1994 he received message about death of

his daughter Mamta.

7. In respect of the evidence of complainant P.W.4 Mahendrakumar, it is pertinent to note that on 15th July, 1994, he came to know about the death of his daughter Mamta, and hence he came down to Nasik. On 17th July, 1994 itself the statements of complainant Mahendrakumar and his son P.W.5 Shailendra came to be recorded. At that time, complainant Mahendrakumar and his son Shailendra did not make any complaint against anybody in relation to the death of Mamta. This has been brought on record in the evidence of P.W.12 A.P.I. Deshpande who is the Investigating Officer in the present case. On 15th July, 1994, when A.P.I. Deshpande had informed complainant Mahendrakumar on telephone that his daughter Mamta has died, complainant Mahendrakumar did not tell A.P.I. Deshpande that he had any complaints against any of the accused persons. In his statement recorded on 17th July, 1994, the complainant has stated that his daughter Mamta had a very sensitive nature. She had passed B.A. in the third class. Due to this, Mamta had some inferior complex and she felt that if her in laws would come to know this fact, she would fall in their eyes. As Mamta had to fill in admission form for M.A., she knew that the fact of her passing of B.A. in third

class, would be revealed to her in laws and hence, she committed suicide. P.W.5 Shailendra also gave similar statement to the police on 17th July, 1994. Thereafter, the complainant had gone back to Allahabad and he gave typewritten complaint to the police station at Allahabad which complaint was brought by a constable of George Town Police Station Allahabad to Nasik Road Police Station and produced before P.W.12 A.P.I. Deshpande on 25th July, 1994. On receiving the complaint, A.P.I. Deshpande wrote a letter Exhibit-48 to the Police Inspector of George Town Police Station in which the earlier facts relating to this case and the statement of Mahendra and his son Shilendra being recorded on 17th July, 1994 and the contents of the said statement are reflected. However, on the strength of the complaint received from George Town Police Station, A.P.I. Deshpande registered the case and proceeded to investigate the matter. It is pertinent to note that during the course of investigation the statement of Sandhya who is sister of Mamta came to be recorded on 4th August, 1994. However, Sandhya did not make any complaint concerning the death of Mamta. This fact is stated by A.P.I. Deshpande. Thus, it is seen that immediately after Mamta had expired, her father, brother and other family members had no complaints

in relation to the death of Mamta.

8. Shri.B.G.Vaidya, the learned advocate for the appellants has submitted that after complainant Mahendrakumar went back to Allahabad, he had concocted false story of demand of Rs.20,000/- for furniture by appellant no.1 and illtreatment and harassment by the accused persons and filed a false complaint against the accused persons. There appears to be some merit in this contention. On 17th July, 1994 complainant Mahendrakumar and his son Shailendra did not have any complaints against the accused persons and lateron, the complainant has sent typewritten complaint to Police Station at Allahabad which came to be forwarded to Nasik Road Police Station. The complainant Mahendrakumar has given explanation that he had given statement on 17th July, 1994 as the appellant no.1 Lallansingh had threatened him and Lallansingh had taken him to Nasik Road Police Station. As he was frightened on account of threats given by Lallansingh, he gave the said statement on 17th July, 1994. However, in this connection, it is pertinent to note the evidence of his son P.W.5 Shailendra. P.W.5 Shailendra does not speak of being threatened by any of the accused persons or by anyone on their behalf. Yet he has given the same statement as that given by his father

Mahendrakumar. In fact, P.W.5 Shailendra has admitted that when his father went to the Police Station the other persons from Allahabed also came to the police station. He has stated that the persons who accompanied his father from Allahabad were staying in the same room where his father and he himself were staying and these persons who accompanied his father from Allahabad, went to the police station with his father. He has also stated that he did not complain to anybody in respect of the incident till before 11th August, 1994. Had Mamta really been subjected to cruelty and harassment on account of illegal demand, her brother P.W.5 Shailendra would have certainly complained about this aspect immediately after death of Mamta. However, he does not do so till 11th August, 1994. Till 11th August, 1994 which is one month after the incident, he did not complain to anybody in relation to his sister being harassed and illtreated by the accused persons. This behaviour is most unnatural. Looking to the evidence of P.W.5 Shailendra, the stand taken by Mahendrakumar regarding his statement recorded on 17th July, 1994 that his daughter was of a sensitive nature and committed suicide on account of her bad results in B.A. examination and that he had no complaint against the accused persons on account of threats by appellant no.1, appears to be

false. Moreover, it is also to be noted that statement of Sandhya who is the sister of Mamta, was recorded on 4th August, 1994. However, she did not make any complaints concerning the death of Mamta.

9. P.W.6 Ramlagan Singh is the relative of the complainant Mahendrakumar. P.W.7 Satyaprakash Bahadur is the neighbour of the complainant. P.W.9 Rammurti is the colleague of the complainant. P.W.10 Shivshankar was the Govt. Contractor who was working in the same department of the father of Mamta. All these witnesses have stated that at the time of marriage, accused no.1 Lallansingh made demand for Rs.20,000/- for furniture. All these witnesses have given their statements to the Police belatedly i.e. almost one month after the incident. No plausible explanation has been given for this delay on their part. In view of this fact, I find it unsafe to rely on their evidence.

10. It is the case of the prosecution that appellant no.1 Lallansingh had demanded an amount of Rs.20,000/- for furniture and as the said demand was not met, Mamta was illtreated and harassed. In this connection, it is pertinent to note the evidence of complainant P.W.4 Mahendrakumar himself wherein he has stated that there was no agreement for giving

any dowry etc. in the marriage. So also P.W.6 Ramlagan Singh who is a relative of the complainant, has stated that at the time of settlement of marriage, there was no talk of giving or taking any dowry. P.W.8 Shailesh who is the other brother of Mamta and son of complainant P.W.5 Mahendrakumar, has stated that the atmosphere at the house was happy when his sister left for her matrimonial home. If the illegal demand has been made by appellant no.1 Lallansingh when Mamta was leaving for her matrimonial home, in such case, the atmosphere would not have been a happy one when his sister left the house of the parents for her matrimonial home. In such case looking to the evidence on record, the evidence of the prosecution witnesses that demand was made by the appellant no.1 for money towards furniture does not appear trustworthy and reliable.

11. As stated earlier, complainant P.W.4 Mahendrakumar had earlier given a clean chit to the accused persons, however, thereafter he has implicated them. Not only the complainant and his son have belatedly implicated the appellants but the statements of other witnesses who have stated about the demand of appellant no.1, are all recorded after much delay. The statement of Shailesh was recorded on 11th August, 1994 wherein for the first time, he

implicates the appellants. So also the statement of P.W.7 Satyaprakash has been recorded on 11th August, 1994. The statements of other witnesses who implicate the accused, were also recorded on 11th August, 1994 or thereafter. Looking to the facts and circumstances pertaining to this case, it appears that the appellants have been falsely implicated in this case as an after thought.

12. The prosecution has also relied on letters Exhibits-24 to 29 which were written by deceased Mamta to her father i.e.complainant and various other family members. In most of the letters, the letters are of general nature wherein Mamta has expressed that she misses her family members etc. However, in two of the letters i.e. Exhibits-24 and 26, Mamta has made some vague statement against her mother in law i.e. appellant no.2 and her sister in law who is not arraigned as an accused in the present case. In Exhibit-24 the allegations are only against mother in law and sister in law and Mamta has stated that she did not find their dealings to be proper. There are no allegations in the said letter against any of the other in laws or the husband of Mamta. In Exhibit-26 the allegations are only against the mother in law. In none of the other letters, any direct or specific allegations

have been made against any of the appellants. It is pertinent to that in none of these letters there is any mention of any demand by appellant no.1 or any of the other accused regarding any amount to be paid towards furniture or that Mamta was being illtreated or harassed by any of the accused on account of non-fulfillment of the demand for money towards furniture.

13. As far as allegations against the mother in law are concerned, she is no more and hence, the allegations made in the letters by Mamta against her mother in law, would be of no use to the prosecution. As far as allegations against sister in law are concerned, she is not one of the appellants in this case and hence, those allegations are also of no use to the prosecution.

14. In the present case, no specific instances of cruelty, illtreatment or harassment at the hands of any of the appellants to deceased Mamta, have been brought on record. There was no beating or any physical illtreatment to Mamta. There are only vague allegations of taunting, however, these allegations are against mother in law and sister in law as stated above. Neither in the evidence of any of the witnesses nor in any of the letters written

by Mamta has anything specific come on record against any of these appellants in respect of cruelty and harassment being meeted out by any of them towards Mamta. It is no doubt true that it has come on record that the demands were made by appellant no.1 Lallansingh for an amount towards furniture. However, I have observed earlier that the accused were falsely implicated as an after thought. Looking to all the facts, I do not find the evidence of the witnesses to be reliable and trustworthy. For the said reasons, I am of the opinion that this is a fit case wherein the appellants should be extended the benefit of doubt.

15. In the result, this appeal is allowed. The conviction and sentence of the appellants for the offence under Section 498-A read with Section 34 of IPC passed by the learned Addl.Sessions Judge Nasik dated 17th October, 1995 in Sessions Case No.40 of 1995, is set aside and the appellants are acquitted thereunder. The fine amount if any, paid by the appellants, shall stand refunded to them. The appellants are on bail. Their bail bonds shall stand cancelled.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.530 OF 1995

(Shri.Lallansingh M.Singh and Ors. Vs. The State of Maharashtra)

Office Notes, office Court's or Judge's orders Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders

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Mr.B.G.Vaidya, Advocate for Appellants
Mr.A.S.Shitole, A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : NOV.30/DEC.1, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. In the result, this appeal is allowed. The conviction and sentence of the appellants for the offence under Section 498-A read with Section 34 of IPC passed by the learned Addl.Sessions Judge Nasik dated 17th October, 1995 in Sessions Case No.40 of 1995, is set aside and the appellants are acquitted thereunder. The fine amount if any, paid by the appellants, shall stand refunded to them. The appellants are on bail. Their bail bonds shall stand cancelled.

(V.K.TAHILRAMANI,J.)